

2-03 Exam Missouri Essay 1 - Sample Answer #1

1. The Missouri Court of Appeals reviews the decision of the Board. The court of appeals reviews the decision of the fact finder. The Circuit Court will have no better ability than the Appeals Court to decide so they will look to - as provided in the rules - the fact finders decision. Here, the board was finder of and hearer of facts their decision will be reviewed. Decisions of pure law will be made de novo and not on the Circuit Courts decision either.
2. The scope of review will be whether substantial evidence exists to uphold the board's decision. It is a deferential view, and the board's decision is likely to be upheld. It is a question of reasonableness - unless their decision is unreasonable on the facts at bar it will be upheld. Questions of law will be reviewed de novo.
3. The scope of review will be de novo review. The Court will grant no deference to a decision that is pure law. The ruling would be based on a purely legal issue - citizen rights under the law. The court subsequently wouldn't grant deference due under findings of fact or mixed law and fact questions.
4. The Court will not reach the merits of Joe's constitutional argument. In order to preserve issues for appeal parties must raise them at each stage of the proceeding. Here, Joe failed to raise the argument with either the board or the Circuit Court. Subsequently, the Court of Appeals will dismiss the appeal with regard to the constitutional issue.
5. The Circuit Court does not have jurisdiction. MAPA requires Joe exhaust all administrative remedies prior to bringing his claim in court. Here, the law provides a hearing before the Board. If Joe doesn't take advantage of that and any appeals provided in the PMC he may not bring a claim into court.

2-03 Exam Missouri Essay 1 - Sample Answer #2

1. On appeal, the Missouri Court of Appeals is reviewing the decision of the Board. The basis of the case is the decision by the Agency and since the trial court affirmed the Board's decision, it is the Board's decision that is being reviewed. The trial court is acting as an appellate court so its decision is not reviewed. It is the underlying decision of the Agency that must be reviewed by the appellate court.

2. The applicable scope of judicial review to be applied in reviewing whether Joe's building is a dangerous building as defined in the PMC is substantial evidence.

At issue is the scope of review for an Agency's decision on historical fact. When an agency bases a decision on historical fact the reviewing standard is substantial evidence, meaning is the decision reasonable based on the record as a whole.

Here, the Board made a factual finding that Joe's building is a dangerous building as defined by the PMC and such decision would be reviewed under the substantial evidence standard.

The dangerous building may be viewed as a mixed question of law and fact in which case an appellate court may view the decision as one of law and use the de novo standard applicable to legal decisions. However, the facts indicate the Board made a factual finding so the appellate court would most likely use the substantial evidence standard of review.

3. The applicable scope of judicial review is de novo. At issue is what scope of judicial review is applicable to the review of an agency's decision based on law.

The applicable scope of review for decisions based on law is de novo.

Here, the issue of whether PMC requires a property owner be given a reasonable opportunity to repair a building determined to be dangerous before an Order of Demolition is issued is one of law because it involves interpreting the PMC. Therefore, the applicable scope of judicial review is de novo.

4. The Missouri Court of Appeals will not reach the merits of Joe's constitutional argument.

At issue is whether Joe must exhaust his administrative remedies before he may seek review. Normally, a Missouri appellate court will not consider arguments not raised in the proceedings before it. The issue normally needs to be raised before the agency or court. Normally, a claimant before an agency must exhaust administrative review of all issues before seeking review in a court of law. However, there is an exception to the exhaustion of administrative remedies requirement when the claimant raises a direct constitutional attack. Such attack may be brought directly to a court of law for review.

Joe will face difficulty, however, because he did not raise the issue before the Circuit Court of Cole County. Joe should have raised such attack in the Circuit Court.

5. The Circuit Court does not have subject matter jurisdiction to hear the Petition for review.

At issue is whether a claimant before an agency must exhaust his administrative remedies before seeking judicial review.

A claimant before an agency must exhaust administrative remedies, such as review by the agency or the Appeals Board in this case. There are exceptions to this requirement, for instance, if the claimant is raising a direct constitutional attack, or agency review would be futile, unreasonable agency delay, or inadequate agency remedies.

In this case, none of the exception to administrative remedy exhaustion seem applicable. Nothing in the facts indicate unreasonable agency delay, futility or inadequate remedies and nothing indicate Joe intended to raise the constitutional issue before the Circuit Court, rather, Joe did not raise the constitutional issue before the circuit court. Therefore, the Circuit Court would be without subject matter jurisdiction because he failed to exhaust all administrative remedies, in particular, review by the Appeals Board.

2-03 Exam Missouri Essay 1 - Sample Answer #3

1. The Court of Appeals reviews the decision of the board. Generally, courts of appeals review, directly, decisions of circuit courts. This case, however, is an administrative law issue. As such, the circuit court performed an on the record review, not an original hearing. Thus following the requirements of the Missouri Administrative Procedures Act (“MAPA”). The Court of Appeals will directly review the actions of the board.
2. The Court of Appeals will review the board’s factual finding, that the building is dangerous, by via the sufficient weight of the evidence standard. Courts of appeals are very deferential to agencies in their fact finding capacity. As such, if there is sufficient evidence in the record to satisfy a reasonable finder of fact that Joe’s building is dangerous, then the court of appeals will not reverse the agency’s finding of fact.
3. The Court of Appeals will review the Board’s determination of law, that there is no need to provide an opportunity to repair, using the de novo standard. Missouri courts have not adopted the federal Chevron standard as to agency determinations of law. Therefore, the Court of Appeals will treat this question of law as it does all questions of law by applying the de novo standard.
4. The Court of Appeals will not reach Joe’s constitutional law question. As a general rule, Missouri Court’s of Appeals will not hear issues that are raised for the first time during the appeals process. Issues must be raised at hearing below and properly preserved for appeal. The exception to this rule lies in subject matter jurisdiction. Since Joe is not raising an issue of subject matter jurisdiction, he waived his constitutional argument by failing to raise it below.
5. The Circuit Court would not have subject matter jurisdiction in this case. In order to review an agency decision, the case must be ripe, the plaintiff must have standing, and the plaintiff must have exhausted administrative remedies. By failing to take the case to the Appeals Board, Joe failed to exhaust all administrative remedies. While there is an exception to the exhaustion requirement if exhaustion would be futile, in this case the exception doesn’t appear to apply. Therefore, the Circuit Court is without subject matter jurisdiction, because Joe failed to exhaust administrative remedies.

2-03 Exam Missouri Essay 2 - Sample Answer #1

1. Kathryn, Lawrence, and Orville Jr. may act as personal representative; also, such person as appointed by court. Any intestate taker who applies and is found fit (over 21, has capacity) may be appointed personal representative. Here Kathryn, Lawrence, and Orville will split the estate and all would be eligible for Personal Representative.
2. Under the laws of Missouri: Joe, Kathryn, Lawrence, and Orville Jr. will take. Joe will take $\frac{1}{3}$, Kathryn $\frac{1}{3}$. Lawrence and Orville Jr. will take $\frac{1}{6}$ each. Under intestate succession siblings and parents will divide the entire estate with half blooded siblings taking half shares. This leaves 2 whole shares and 2 half shares to be divided. Orville Sr. will take nothing. Orville Jr. takes under the anti-lapse statute where a predeceased sibling leaving issue will pass on their share to descendants. Nancy and Orville Sr. are not blood relatives or adoptive children and take nothing.
3. The governing law will be Iowa's law. The law of the situs controls w/regard to real estate. MO has no jurisdiction.
4. Estate tax due will be equitably apportioned. Because the decedent died intestate all will share in tax payments. Where specific devises are made in a will the tax is taken first from residue. Here all will pay according to their share.
5. Joe's death will be ruled to be simultaneous if he dies within 120 hours of Jim. Otherwise, his estate will take. Where a beneficiary under will or intestate dies within 120 hours of decedent they are treated as predeceased for purposes of their share. Here, Joe's share will go to his descendants or - if their gifts lapse - to his relatives or his descendants descendants under the anti-lapse statute. Kathryn $\frac{1}{3}$ Lawrence $\frac{1}{3}$ and Orville Jr. $\frac{1}{3}$.

2-03 Exam Missouri Essay 2 - Sample Answer #2

1. Anyone of the parties, with the exception of Nancy & Orville, will be eligible to be the personal representative of Jim's estate assuming one of the others will choose to do so.

When a party dies without leaving a will his property must pass through the laws of intestate succession in MO. Anyone can petition the court to be a personal representative of the estate assuming no one is named, & since this is intestate no one will be named. However, when a party is survived by family members within the ninth degree there is a preference to allow that party to take. If anyone so situated refuses to be a personal representative, the court can appoint a representative or petition of any such party. The family member should petition the court as well.

Here Jim is survived by Kathryn, a sister, Lawrence a $\frac{1}{2}$ brother Joe, his father, assuming we are within the week, Orville Jr. his $\frac{1}{2}$ sister's son thus being Jim's nephew. He is also survived by a stepsister Nancy & Mary's husband Orville Sr. his $\frac{1}{2}$ brother in law. Assuming Kathryn, Lawrence or Joe, is still living, or Orville Jr., if over 18, want to be the representative they will be named. If none does then Orville or Nancy may petition the court and be named.

2. Missouri will distribute the estate per capita with representation. This means that we will start at the first line with the common ancestor and distribute evenly, subject to some exceptions, and if a party is predeceased then his/her issue will take that party's share.

First it is important to point out that since Nancy is a stepsister, and the facts do not state she was adopted by Joe Jones, she will take nothing. Had she been adopted, she would take on the same level as Lawrence and Mary. Second since Lawrence and Mary (Orville Jr, her issue) are $\frac{1}{2}$ siblings, they will take $\frac{1}{2}$ of the amount that Kathryn and Joe will take.

Since Jim died intestate without issue or a spouse it will go to his parents and siblings in equal shares. Joe will take $\frac{1}{3}$ and Kathryn will take $\frac{1}{3}$. Since Lawrence is a $\frac{1}{2}$ brother he will only take $\frac{1}{6}$ and since there is representation Orville Jr will take $\frac{1}{6}$. Orville Sr. takes nothing since he is a spouse of a lineal descendent. Also since Joe survived 120 hours of Jim's death, he still takes a share under the will.

3. Iowa will govern the distribution of Jim's farm. In MO, when real property passes intestate the laws of the situs will control. Thus since the property is in Iowa, Iowa law will control. The Missouri Probate division does not have any jurisdiction over the Iowa Farm.

4. Under intestate succession the decedent's estate that is passed is the net value of the estate. Thus each party takes his/her share and the amount of the estate tax will be equitably apportioned to the beneficiaries of the estate.

5. Since Joe survived Jim's death by 120 hours, the facts tell us that he survived Jim by a week, Joe's estate will pass either by will, if there was a will, the facts do not tell us. If there was no will then his share will pass to Lawrence Mary (Orville Jr) and Kathryn. However in this case

Kathryn will get $\frac{1}{2}$ the amount Lawrence and Orville Jr. take since she is a $\frac{1}{2}$ sister. Also Nancy still takes nothing since the facts do not tell us that Joe adopted Nancy. If he did she would take a share. So Joe's estate, absent a will, will pass by the laws of intestate succession in MO, per capita with representation.

2-03 Exam Missouri Essay 2 - Sample Answer #3

1. Joe or Kathryn would be the best person to be Jim's personal representative. A personal representative would be a relation to the decedent with the most to lose intestate. Since Joe is the father & Kathryn is a full sister, both of them would have the most to lose. However if, Joe or Kathryn does not want to do it any other beneficiary could do it or the Ct could appoint one.

2. Jim's intestate estate will be distributed per stirpes under MO law. Since Jim did not have issue or a spouse and only had a full sister (Kathryn) a couple of ½ siblings (Lawrence & Mary), and a stepsister (Nancy), and a father living (Joe). The breakdown is as follows, since it cannot go down the line to any issues, it must go up the line to parents & siblings.

Joe: would take a full share i.e. 1/3 of the estate going up the line.

Kathryn: would also take a full share i.e. 1/3 of the estate as a full sister

Lawrence: would share a full share with Mary as a ½ sibling i.e. he would get 1/2 of 1/3 i.e. 1/6

Mary: would share with Lawrence i.e. 1/6 but b/c she predeceased Jim, her share will go to Orville Jr. as right of representation.

Nancy: will get nothing not being a blood relative of Jim.

Orville Sr.: will get nothing not being a blood relative.

Orville Jr.: see above under Mary.

3. Iowa law will govern because the land resides in Iowa & they have governing rights. A state has the right to extend its law over land residing in its jurisdiction.

The county does not have jurisdiction over the Iowa land distribution . A state in probate has jurisdiction over distributing its own land.

4. The estate tax will be apportioned among the beneficiaries. This is because the IRS will take their monies first as a claim against the estate.

Federal taxes (as well as state) have claims first at a intestate estate. Therefore since, the \$1,000,000 will be reduced at the top, all the beneficiaries will equitably receive less.

5. Since Joe lived more than 120 hrs after Jim's death, there is no issue, that Joe will be considered to have predeceased Jim. Joe will distribute as intestate (if he has no will) or testate if he does.

The simultaneous death act states that a beneficiary that dies within 120 hrs of decedent, will take

as if he predeceased decedent. In our case, since it was more than 120 hours, then it does not apply and he and Joe's estate will pass intestate or testate depending on whether he has a will.

2-03 Exam Missouri Essay 3 - Sample Answer #1

(A)

1. ACME may serve the summons and petition on Clipper by 3 methods. One is to send the summons and petition with an acknowledgment service. Two is by a court appointed process server or three is by using a registered process server in Ohio, who must sign an affidavit swearing to his service and his ability to do so in Ohio. If acknowledgment service fails, i.e. the defendant refuses to sign the jurisdiction waiver, then ACME must use one of the other two methods. Missouri's long arm statute and service of process statute allow ACME to effectuate this service. These must be served on a corporate officer, manager, registered agent in Ohio, or any other duly designated agent. If ACME meets these requirements service will be proper and thus constitutional. Also, if Clipper makes an appearance and does not argue improper service it is deemed waived.

2. The court should deny Clipper's motion to dismiss for lack of personal jurisdiction. Missouri Courts can properly exercise jurisdiction over an out of state defendant if the statutory requirements are met and the constitutional requirements are met. In order to satisfy the statutory requirements, where as here specific or long arm jurisdiction must be met. In order to meet the long arm jurisdiction requirements the cause of action must arise out of the contacts with the state. Here the relevant factors are conducting business in MO, entering into negotiations in MO for a contract to be performed in MO. Clipper satisfied the requirements of conducting business in MO and entering into a contract in MO by several discussions by telephone or e-mail, with one party negotiating being in St. Louis, entering into a contract in St. Louis, as the facts state. Also the contract is to be performed in MO as there is no way to know if the goods conform to the contract until they arrive in St. Louis. The long arm statute is met.

To satisfy the constitutional requirement the defendant must purposefully avail himself to the benefits of MO state. His contacts must be related to his conduct in the state and not the unilateral acts of the plaintiff or a third party. The cause of action must arise out of his contacts and conduct and the forum must be reasonable. Here, the defendant ships goods to MO to be sold in MO to MO residents and MO goods shipped are nonconforming, late deliveries the conduct, contacts and cause of action all relate. The forum is also reasonable since the representatives already came down from Ohio once, there is nothing to suggest it cannot be done again.

3. If Clipper fails to raise lack of personal jurisdiction before answering it will be deemed waived. When a party wants to assert a defense of lack of personal jurisdiction it must do so at the earliest time. If the party answers without raising the defense it is waived.

(B)

1. If ACME wishes to add Clipper as a party the suit it may do so by impleading Clipper. If a defendant in a suit wants to bring in another party who would be liable to the defendant for all or some of the amount the original defendant would be liable to plaintiff, the original defendant can implead that party in. It is a derivative liability theory, so if ACME is claiming that it is not liable at all it cannot do so and will be precluded from impleading. The Motion to Implead must

be made to the court within 10 days of answering.

(C)

1. In order for ACME to preserve his claims for Appellate review ACME must object on the record the inclusion or exclusion of the evidence. To preserve the claim regarding admitting the evidence ACME should introduce the evidence at trial and when it is objected to by opposing counsel preserve it on the record by arguing it should be included. As far as Wilson proving all elements of his claim, at the close of plaintiff's case ACME should move for directed verdict. A directed verdict will be awarded when no reasonable jurors acting consistently could differ on the outcome. If plaintiff fails to present a prima facie case a directed verdict is appropriate and is necessary to preserve this argument on appeal.

2. Since this is a jury trial ACME must make a motion for a new trial. This must be raised within thirty days of the final judgment being entered and should include the arguments why a new trial is necessary. Prior to this, ACME should file a judgment notwithstanding the verdict. This too must be within thirty days of the final order being entered.

2-03 Exam Missouri Essay 3 - Sample Answer #2

(A) * {To file Petition and state jurisdiction in order to serve}

1. To serve Clipper, ACME must show how the court (Circuit Court of the City of St. Louis) can get personal jurisdiction over Clipper. MO can get personal jurisdiction through its long arm statute. Where, someone or corporation purposefully avails himself to the laws of Missouri the court can then look @ certain factors to determine jurisdiction. Business transactions, contracts, torts, real estate, insurance and marriage are all looked at. Because, Clipper negotiated the contract in Missouri, ACME can base jurisdiction on the long arm.

SERVICE * In determining how serve Clipper, MO provides a number of ways for proper service. Personal service may be made on Clipper if there is an agent or representative in Missouri. However; Clipper can not intice or use fraud to get Clipper in Missouri to serve. ACME may serve Clipper through a court (of Circuit Ct. St. Louis) appointed process server because they are out of state or through the sheriff where Clipper is located.

2. The Court should look to Missouri's Long Arm Statute when deciding the motion to dismiss for lack of jurisdiction. Under MO's long arm, the court will first look to the constitutionality of Clipper's involvement in Missouri. Clipper must have purposefully availed itself to laws of Missouri. Then, Clipper's activity must touch Missouri in some way. The courts look to numerous factors, those include business in MO, contracts in MO, torts in MO, real estate, and marriage in MO. The Court will look and make a determination based on the contract. The contract negotiations took place in Missouri, and the contract was prepared in Missouri. However, the contract was signed in Ohio by Clipper. But, again, back in Missouri a representative of ACME signed the contract. The Missouri Court will find that a large part of the contract took place in Missouri and will not dismiss based on lack of personal jurisdiction.

3. If Clipper files an answer to ACME's petition prior to filing its motion to dismiss, AND Clipper did not raise improper (lack of) jurisdiction in the answer he has effectively waived that defense. However, if he did in fact raise it in the answer he has not waived.

(B) 1. ACME may add Clipper as a party by impleader. Impleader is used when one party may be indemnified or another party is partly or wholly liable. Clipper will become a 3rd party defendant. ACME must file a 3rd party petition alleging all facts and stating all legal reasons why Clipper should be added to the suit. ACME must also show the court that ACME has a great possibility of unfairness and that Clipper is also or may be financially responsible. ACME must show that there is the same nucleus of operative facts and same transactions of facts.

Note – If ACME does not file within the proper time allotted by the MO Supreme Court Rule – ACME must ask for leave of Court to file, which is freely granted.

(C) 1a. ACME must ask for judgment notwithstanding the verdict, after the jury returns its decision and for a directed verdict @ the close of the evidence of the Plaintiff's case. [Both on the record]

1b. ACME must have asked the question concerning intoxication, or have been leading up to the question. The other side needs to object on the record and then ACME must preserve for Appellate review. Outside presence of jury ACME must make an offer of proof on the record indicating what the witness would have testified to. And, state his objections to the judge not allowing the testimony on the record.

2. ACME must file a written motion for judgment notwithstanding the verdict and a motion for new trial based on the legal analysis on the Judge.

*NOTE – the Circuit Judge may not even rule on the motions but, ACME must wait 90 days to appeal. When the judge does not rule is similar to a denial of the motion.

ACME then must wait 90 days or for the rulings by the Circuit Judge to appeal.

In the motion for new trial ACME must state exactly what the legal authority and attach transcripts of the trial. ACME must attach any evidence such as affidavits etc.

2-03 Exam Missouri Essay 3 - Sample Answer #3

(A)

1. Pursuant to the Missouri Long-Arm statute, ACME may serve Clipper by any method allowed under Ohio law or by personal service of Clipper by a non-litigant, over 18 years old, appointed by the Circuit Court to serve Clipper.

2. The Court should deny Clipper's motion to dismiss for lack of personal jurisdiction. To gain long arm jurisdiction over an out of state defendant, the Missouri long arm statute and constitutional due process must be satisfied. Under the Missouri long arm statute, if parties contract in Missouri, then there is personal jurisdiction over issues pertaining to the contract. Missouri courts limit contracting under the long arm statute to the place where the contract was accepted. In this case, the contract was accepted in St. Louis. Clipper's signing and mailing of the contract in Ohio constitutes an offer. ACME's later signing in St. Louis constitutes the acceptance. Thus, the long-arm statute is satisfied. To satisfy due process, the defendant must have minimum contacts with the forum state such that jurisdiction in the forum is fair. In this case, the contract negotiation, contract acceptance, and 2 year course of performance establish minimum contacts. Thus, the due process requirement is satisfied.

3. Clipper failed to raise personal jurisdiction in its first responsive pleading. Therefore, it is waived. Following Missouri rules of civil procedure, objections as to personal jurisdiction must be raised in the first responsive pleading. In this case, Clipper did not raise the issue in the answer. Therefore, Clipper has waived the right to object to personal jurisdiction.

(B)

1. ACME may enjoin Clipper as a third party defendant on the legal theory that, as the manufacturer, Clipper must indemnify ACME. As a distributor, ACME only has the duty to cursorily inspect packaged goods it resells. The ultimate liability for manufacturing defects lies with Clipper. Therefore, ACME may seek to enjoin Clipper as a third party defendant on the grounds that Clipper has a duty to indemnify it.

(C)

1. During the trial ACME must (a) file a motion for a directed verdict as to the Wilson's inability to meet his prima facie case, and (b) object to its inability to present evidence of intoxication and proffer the evidence to put it in the record.

2. Within 30 days after judgment has been entered, because this has a jury trial, (a) ACME must file a J.N.O.V. motion to preserve its argument that Wilson failed to make out a prima facie case; and (b) ACME must file a motion for a new trial due to trial error to preserve its argument that the court improperly excluded the evidence of intoxication.

2-03 Exam Missouri Essay 4 - Sample Answer #1

A. Buyer may force collector to sell her the painting. The equitable remedy is specific performance.

Specific performance is allowed in a contract for the sale of goods where 1) there is a valid contract; 2) for unique goods; 3) one party has breached the contract; the court ordering can enforce the remedy. When dealing with specific unique goods a damages remedy or remedy at law is assumed unacceptable and unjust.

Here, a VanGogh painting is clearly unique. The contract appears valid - offer, acceptance, consideration are present. Assuming the court has jurisdiction over the parties and painting (or even just plaintiff and painting in rem) specific performance should be available.

Seller will be forced to sell to buyer as long as buyer provides the money (\$900,000). It doesn't appear from the facts any defenses to equitable remedies apply.

B. Buyer may avoid the contract through rescission, an equitable remedy. Rescission is available in cases of mutual mistake. Where the mistake goes to a material issue the court allows the contract to be rescinded on the theory there could be no true bargain because the foundation the parties based their bargain on wasn't true.

Here, buyer and seller based their bargain on the fact that the painting was a Van Gogh. Since this basic material fact was mistaken by both buyer and seller the court should order the contract rescinded.

One minor factor the court will take into account is the timeliness of buyer's inspection and claim. Even a equitable remedy may be barred by laches if brought unreasonably late.

C. Collector may insist on the purchase price under the theory of reformation. Reformation of a contract will be available if 1) there is a valid contract; 2) if a unilateral mistake exists; 3) one party is aware of the mistake and; 4) in bad faith allows the other party to go forward with the contract.

Here, a scrivener's error as to the price to be paid existed. It was a mistake because it didn't represent the parties' bargain. However, facts tell us buyer knew of the mistake. It is unreasonable to assume collector decided to cut buyer a \$500,000 deal and buyer should have known this. Buyer allowed the contract to become binding in bad faith. Now, collector may petition the court to reform the contract to reflect the true bargain of the parties. This is a suit in equity so extrinsic evidence regarding price will be allowable.

2-03 Exam Missouri Essay 4 - Sample Answer #2

A. The buyer can force the collector to go forward with sale of the painting. At issue is whether the equitable remedy of specific performance is available.

To obtain an equitable remedy the legal remedy must be inadequate. Legal remedies are inadequate if the subject matter of the contract is unique or if damages are speculative, if multiple law suits are needed, or damages would not compensate for irreparable harm to the plaintiff.

Here, the Van Gogh painting is a unique good so the legal remedy for breach of contract damages would not be adequate.

The equitable remedy must also be feasible, i.e. the person ordered to perform must be in the forum or the good to which title is transferred must be in the forum. Under the facts, it appears both Arthur Collector and the painting are in Missouri so this is satisfied.

The remedy must also not be difficult for the court to supervise such as where it involves matters of taste, complex transactions, the defendant cannot perform, or personal service contracts. None of these apply to these facts so an equitable remedy is feasible.

To get specific performance there must be: 1) a valid contract with certain terms (parties, subject matter, price, time manner of payment) and valid consideration; 2) all conditions must be satisfied; and 3) mutuality of remedy exists.

Here, there is a valid contract with certain terms that set out the price, time and manner of payment and the subject matter (Van Gogh painting). The consideration, 1,000,000, also seems fair and adequate.

Buyer has paid the 10% so she has satisfied her conditions to obtain performance. Technically mutuality might not exist because Collector could not get specific performance because he seeks only money; however, a court will grant specific performance if the parties are capable of performing and the court can adequately ensure counter-performance.

Here, there is no impediment to Collector performing because he had not sold the painting and buyer is ready willing and able to perform.

Specific performance can be sought by the buyer.

B. Buyer may avoid her contract through the equitable remedy of rescission.

Rescission applies where there was not a true valid contract and returns the parties to the position they were in before the contract. A contract is not valid and rescission is available if there was mutual mistake of a basic material fact that materially alters the agreement.

Here, there is a mutual mistake of a basic material fact, namely neither party knew the painting

was not authentic. Buyer would not likely pay \$1,000,000 for a fake nor would Collector expect to receive \$1,000,000 for a fake. Therefore the contract may be rescinded. Buyer would be able to receive her 10% payment back since the remedy puts parties back into the position they would have been in before the contract.

C. The Collector can insist upon the original purchase price through the equitable remedy of reformation.

Reformation applies where there is a valid contract but the written agreement does not reflect the parties true agreement. Reformation reforms the contract to reflect the parties true agreement. Reformation is available for unilateral mistakes coupled with fraud. This is where the parties reach an agreement and one party knows of the error in the contract but does not inform the other party.

Here, Collector and Buyer agreed on the \$1,000,000 price, the written contract does not reflect that agreement because it says \$500,000 and Buyer knows of the mistake and does not inform Collector. Collector's own negligence is not a good defense. Therefore, Collector can seek the original purchase price under reformation.

2-03 Exam Missouri Essay 4 - Sample Answer #3

A. Buyer may force Collector to go forward with the sale. Buyer and Seller have a contract for the sale of goods. Buyer has paid Seller (Collector) 10% of the purchase price. Although, the Uniform Commercial Code which governs the sale of goods, does not require consideration to hold an offer open, Collector and Buyer have a fully formed contract (the buy-sell agreement) and Buyer since she has performed is entitled to performance by Collector.

Specific Performance

The equitable remedy is specific performance. In order to get specific performance a remedy at law must not be adequate, there must be no defenses to the equitable remedy, a valid contract must exist, there must be a mutuality of remedies and all conditions to the contract must have been performed.

In this case, the painting is unique so a remedy at law - damages - will not be sufficient. Nothing in the facts states that Collector has any defense against Buyer. The contract (buy - sell agreement) under the facts as given seems to be valid - the terms are certain and consideration is given. All conditions seemed to have been performed. Collector is the owner of the painting and thus has marketable title.

There's also a mutuality of remedies. Just as Buyer wants to force Collector to sell, Collector could also force Buyer to buy. Thus, because both parties can be forced to perform and the court can compel one party to sufficiently perform to its satisfaction, a mutuality of remedies exists.

Thus, Buyer may be able to force Collector to go through with the transaction and may use the equitable remedy of specific performance.

B. Buyer may avoid her contract with Collector when there is a mutual mistake as to a mutual fact, a contract may be rescinded. Rescission ends a void contract and treats it as if it never happened. Also, any value exchanged can be returned - restitutionary rescission.

In this case, both parties were mistaken as to the authenticity of the painting. Even though Collector claims that buyer always loved it, the court will be disinclined to award specific performance where personal taste and judgment is concerned. In any event, the parties were mutually mistaken about the authenticity of the painting so the contract may be rescinded and buyer's 10% payment returned.

C. Collector can insist upon the original purchase price. A unilateral mistake that the non mistaken party knows about will not bind the mistaken party. Since Buyer knew of the mistake, Buyer may not snap up the bargain. The contract will be reformed to reflect the terms of the contract. Reformation takes an otherwise valid contract and reforms it to reflect the terms of the earlier agreement. Therefore, Collector may insist upon the original price and may use the equitable remedy of reformation to reform the contract to reflect its original price terms.